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Attorneys for Strider Construction Co., Inc.

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STRIDER CONSTRUCTION CO. INC.,

Plaintiff,

vs.

IDAHO WATER RESOURCE BOARD,

Defendant.

Case No. CV01-22-10932

PLAINTIFF'S MOTION TO STRIKE
JURY TRIAL

Plaintiff Strider Construction Co. Inc. ("Strider") moves this Court for an Order striking the jury trial noted in its November 16, 2022 Scheduling Order. Neither party demanded a jury trial. Therefore, in accordance with I.R.C.P. 38, any jury trial was waived. Accordingly, Strider requests an amended Scheduling Order stating that this matter will be handled by a bench trial.

I. STATEMENT OF FACTS

Strider entered into a construction contract with Idaho Water Resource Board (the "Board") to perform improvements to the Priest Lake Outlet Dam (the "Project"). Strider brought this lawsuit against the Board for Breach of Contract, Violation of the Idaho Prompt Payment Act, and

Declaratory Judgment. The Board filed its Answer and Counterclaim on August 23, 2022. Strider answered the counterclaim on September 14, 2022.

Neither party made a written demand for a jury trial. However, the Scheduling Order issued on November 16, 2022 states the trial shall be a jury trial.

II. AUTHORITY

To demand a jury trial, a party must serve the other party with a written demand “no later than 14 days after the last pleading directed to the issue is served” and must also file the demand. I.R.C.P. 38(b). If not properly served and filed, the party waives a jury trial. I.R.C.P. 38(d). If no demand is made, the trial is presumed to be conducted by the Court. I.R.C.P. 39(b).

After the 14-day period for demanding a jury trial has passed a party may, on motion, seek an order for a jury trial “on any issue for which a jury may have been demanded.” I.R.C.P. 39(b). But the movant must provide good cause for why it failed to comply with I.R.C.P. 38, and the Court has broad discretion to deny such a motion. *See KDN Mgmt., Inc. v. WinCo Foods, LLC*, 164 Idaho 1, 6, 423 P.3d 422, 427 (2018). Courts routinely deny a motion for a jury trial when the movant fails to give a reason for the untimely jury demand. *Id.* (citing *City of Pocatello v. Anderson*, 106 Idaho 370, 373, 679 P.2d 647, 650 (1984); *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141 Idaho 388, 398, 111 P.3d 73, 83 (2005); *Viehweg v. Thompson*, 103 Idaho 265, 269, 647 P.2d 311, 315 (Ct. App. 1982)).

Here, neither party made a written demand as required under I.R.C.P. 38 or moved under I.R.C.P. 39 for a jury trial. The last pleading in this case was the Answer to the Counterclaims filed on September 14, 2022. A written demand for a jury trial was due 14 days later – on September 28. Neither party made any such demand. Further, neither Strider nor the Board has since made a motion for a jury trial pursuant to I.R.C.P. 39 or made any showing as to why a demand was not timely made under I.R.C.P. 39.

Therefore, Strider requests that this Court issue an order striking the jury trial and setting the matter for a bench trial.

III. CONCLUSION

No jury demand has been made as required by I.R.C.P. 38. Thus, Strider respectfully requests the jury trial be struck and an amended Scheduling Order be issued.

DATED: This 3rd day of March, 2023.

AHLERS CRESSMAN & SLEIGHT PLLC

By: /s/ Lindsay Watkins
Lindsay Watkins
Attorneys for Strider Construction Co., Inc.

LAW OFFICE OF JOHN H. GUIN, PLLC

By: /s/ John H Guin
John H. Guin
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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of March, 2023, a true and correct copy of the within and foregoing instrument was served upon:

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*Attorney for Defendant Idaho Water
Resource Board*

- Via U.S. Mail
- Via Legal Messenger
- Via Federal Express
- Via Facsimile
- Via iCourt E-File and Serve**

DATED: This 3rd day of March, 2023.

/s/ John H. Guin